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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,838	08/04/2003	Brian Melgaard	MASCO 3.0-049	5258
530	7590	10/14/2005	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			LUONG, SHIAN TINH NHAN	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,838

Applicant(s)

MELGAARD, BRIAN

Examiner

Shian T. Luong

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. Claims 8-9,16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant in claims 1 and 10 do not recite the combination of the package and a product, and yet further defines the product in claims 8, 11 and 16. Applicant stated in the response that the dependent claims are not combination claims and applicant can be his own lexicographer. But claims 8,11 and 16 are still not definite to define the boundary of the subject matter being sought. If the product is not being claimed, then applicant should not further define the product in a dependent claim to confuse the record. In addition, claim 11 only recited functional limitations without additional structures. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2,4-13,15,20-21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Weatherford et al. (US 5,435,447). Weatherford et al. discloses a package for a product. The package has a front panel configured to cooperate with the back panel to form an enclosure and surround at least a portion of the main body to secure the product in the enclosure such that the handle is exposed so that a person can grip the handle of the product. The handle extends in a substantial vertical direction. The enclosure is in substantially the same shape as applicant's

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enclosure. The enclosure has an opening. The panel is transparent. The front panel and back panel are joined along at least one edge. The front panel and back panel has a top portion, a bottom portion, a first side portion and a second side portion. The first side portion extending between the top and bottom portion and defining inner and outer edges and the second side portion having a cutout extending through a central portion thereof and substantially to the inner edge of the first side portion. The enclosure having a first space within the top portion for securing the body portion between first and second panel. A second space in the bottom portion between the first and second panels. A third space is any space other than the first and second space between the first and second panels.

4. Claims 1-2,4-21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Seaton. (US 5,279,417). Seaton discloses a package for a product. The package has a front panel configured to cooperate with the back panel to form an enclosure and surround at least a portion of the main body to secure the product in the enclosure such that the handle is exposed so that a person can grip the handle of the product. The handle extends in a substantial vertical direction. The enclosure is in substantially the same shape as applicant's enclosure. The enclosure has an opening. The panel is transparent. The front panel and back panel are joined along at least one edge. The front panel and back panel has a top portion, a bottom portion, a first side portion and a second side portion. The first side portion extending between the top and bottom portion and defining inner and outer edges and the second side portion having a cutout extending through a central portion thereof and substantially to the inner edge of the first side portion. The enclosure having a first space within the top portion for securing the body portion between first and second panel. A second space in the bottom portion between the first and

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second panels. A third space is any space other than the first and second space between the first and second panels such as the space adjacent to the first space.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 22 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Seaton or Weatherford et al. in view of Official Notice. Although the base reference does not disclose a glue gun, it is notoriously known to place a glue gun in a package such as a blister package. It would have been obvious in view of Official Notice to store glue gun in the package of Seaton or Weatherford et al. to allow the interactive display.

7. Claims 14, 16-19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Weatherford et al. in view of Official Notice. Although Weatherford does not join along the outer edges, it is well known in the art to provide securement along the outer edge to prevent inadvertent opening. Hence, it would have been obvious in view of Official Notice to secure the outer periphery.

Response to Arguments

8. Applicant's arguments filed on 8/25/05 have been fully considered but they are not persuasive. Applicant asserts that the products in the rejection are both extending in a straight-

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line from the main body and not “substantially transversely” to the handles. But applicant is not claiming the combination of the product with the package. The comparison of the unclaimed tool with the tools in the base references does not have bearing on the patentability of the claims. Especially in an anticipated rejection, where a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In addition, the main body of Seaton tool is the blade section on the left of handle 92. The handle then extends substantially transversely from the main body. Moreover, a person can grip the handle from the cutout as claimed.

Conclusion

9. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is **571-273-8300**. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
October 12, 2005


Primary Examiner
Shian Luong
Art Unit 3728